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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAFETY NATIONAL CASUALTY

CO. et al.,

Defendants and Appellants.

A107610

A107612

A108249

A108250

A108251

A108252

A108253

(San Francisco County
Super. Ct. Nos. 01-180586, 01-183691,
01-185876, 01-186910, 01-500188,
01-500186, 01-188673)

The question presented in these seven consolidated cases is whether Penal Code section 1306, subdivision (f)¹ bars the enforcement of summary judgments entered more than two years earlier against a bail bond surety. Because the provision is jurisdictional, and because the facts of these cases do not support a finding of equitable estoppel, we conclude the answer is yes. We therefore reverse the postjudgment orders on appeal and direct the trial court to permanently stay enforcement of the judgments in question.

¹ All statutory references are to the Penal Code unless otherwise stated.

BACKGROUND

These cases share essentially the same relevant factual and procedural history. In each case, Safety National Casualty Company (SNC) posted a bail bond for the release of a defendant from custody. When the defendant failed to appear in court, bail was ordered forfeited and, after expiration of the statutory 180-day waiting period, summary judgment was entered against SNC for the amount of the bond plus costs. (§§ 1305, 1306, subd. (a).) Summary judgments in these cases were entered between August 2000 and November 2001.

On September 17, 2001, SNC filed motions in five of the consolidated cases to set aside or vacate the summary judgments entered against it.² It filed the same motion in the two remaining cases on December 28, 2001. On March 15, 2002, the trial court entered orders in the seven cases denying SNC's motion to set aside the judgments. SNC appealed, and almost two years later, on March 3, 2004, the Appellate Division of the San Francisco Superior Court affirmed the orders.

On April 5, 2004, SNC filed new motions in the trial court seeking to set aside summary judgment, discharge forfeiture and exonerate bail, or permanently stay enforcement of the judgments entered in the seven cases. SNC argued the summary judgments were unenforceable because the two-year enforcement deadline of section 1306, subdivision (f) had expired. The trial court denied the motion, and these appeals followed.³

² In two of these cases, SNC had initially filed appeals but abandoned them before pursuing the motions for set aside.

³ SNC filed two appeals (with amounts in controversy exceeding \$25,000) in this court and filed the remaining five appeals in the appellate division of the superior court. By orders of October 29, 2004 and November 5, 2004, we transferred to this court the cases pending in the appellate division, and we ordered all seven appeals consolidated for purposes of briefing, argument and decision.

DISCUSSION

The relevant facts are not in dispute. In all of these cases, summary judgment was entered against SNC more than two years before SNC filed a motion to stay enforcement, and during that time respondent did not initiate enforcement procedures to collect upon the judgments. (§ 1306, subd. (e).) Thus, the sole question presented on appeal is whether the two-year period described in section 1306, subdivision (f) renders the summary judgments unenforceable. Because this is a purely legal issue, we review the trial court's decision de novo. (*People v. American Contractors Indemnity Co.* (1999) 76 Cal.App.4th 1408, 1413.)⁴

The enforcement of bail bond forfeiture is governed entirely by statute. (*County of Orange v. Classified Ins. Corp.* (1990) 218 Cal.App.3d 553, 556.) The time limits set forth in these statutes, sections 1305 and 1306, are jurisdictional in nature and “ ‘must be strictly followed or the court acts without or in excess of its jurisdiction. [Citation.]’ ” (*People v. Topa Ins. Co.* (1995) 32 Cal.App.4th 296, 300; see also *People v. American Contractors Indemnity Co.* (2001) 91 Cal.App.4th 799, 805, 809-810; *County of Orange v. Classified Ins. Corp.*, *supra*, 218 Cal.App.3d at p. 556.)

Section 1306, subdivision (e) requires the district attorney or county counsel to demand immediate payment from a surety within 30 days after summary judgment becomes final and, if the judgment remains unpaid, to “forthwith enforce the judgment in the manner provided for enforcement of money judgments generally.” (§ 1306, subd. (e)(2).) Section 1306, subdivision (f) then states: “The right to enforce a summary judgment entered against a bondsman pursuant to this section shall expire two years after the entry of the judgment.”

⁴ Although we previously denied respondent's motion to dismiss the appeal, respondent once again suggests the orders denying SNC's motions to vacate summary judgment and permanently stay enforcement are not appealable. Respondent is incorrect. Appeal may be taken from such postjudgment orders. (Code Civ. Proc., § 904.1, subd. (a)(2), (6); see *People v. American Contractors Indemnity Co.* (2006) 136 Cal.App.4th 245 [deciding appeal taken from order denying motion to set aside summary judgment].)

This “clear and unambiguous” deadline for enforcement of summary judgment against a surety has been construed as mandatory. (*County of Orange v. Classified Ins. Corp.*, *supra*, 218 Cal.App.3d at p. 556.) In *County of Orange v. Classified Ins. Corp.*, a surety moved to set aside or permanently stay enforcement of a summary judgment entered more than two years earlier. (*Id.* at p. 555.) The county argued the two-year enforcement deadline of section 1306 was tolled during the period when the parties litigated the validity of the summary judgment on appeal. (*Ibid.*) Division Three of the Fourth District Court of Appeal rejected this argument, however, noting, “Nothing in the language of the Penal Code provisions governing forfeiture and exoneration of bail indicates the period of enforcement is stayed by the taking of an appeal.” (*Id.* at p. 556.)⁵ The court reasoned that, like any other civil money judgment, enforcement of a bail bond forfeiture judgment is stayed only if an appeal bond has been posted. (*Id.* at p. 557; see Code Civ. Proc., § 917.1, subd. (a) [“Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for . . . [¶] [m]oney”].)

Respondent attempts to distinguish the *County of Orange* case on the facts, because there the surety first appealed from the summary judgment motion, whereas here SNC’s first appeal was from the denial of its motion to vacate summary judgment. Even if we were inclined to consider this distinction meaningful, respondent’s argument is directly undermined by a recent decision. In *People v. American Contractors Indemnity Co.*, *supra*, 136 Cal.App.4th at p. 248, a panel of the same court that decided *County of Orange* concluded the holding of this earlier case also applies when the surety has taken an appeal from denial of a motion to vacate summary judgment. Addressing the specific procedural situation now before us, the court asked, “Does an appeal from an order

⁵ The *County of Orange* opinion discusses section 1306, subdivision (e). After that opinion was issued, the Legislature amended section 1306 and redesignated former subdivision (e) as the current subdivision (f), without substantive change. (Stats.1991, ch. 90, § 25, p. 438; see *People v. American Contractors Indemnity Co.*, *supra*, 136 Cal.App.4th at p. 250, fn. 2.)

denying a motion to set aside summary judgment on a bail bond forfeiture and to exonerate bail automatically stay enforcement of the judgment and toll the two-year time period within which the judgment can be enforced?” (*People v. American Contractors Indemnity Co.*, *supra*, 136 Cal.App.4th at p. 249.) The answer? An unequivocal, “No.” (*Ibid.*) The reason in this context, though, is not the absence of an undertaking pursuant to Code of Civil Procedure section 917.1; rather, it is the nature of the order itself. The court explained: “An appeal from an order denying a motion to set aside the judgment does not embrace or affect the judgment itself. Therefore, [the surety’s] appeal could not have stayed enforcement proceedings on the part of the County as to the judgment. It would be anomalous if an appeal from a judgment did not stay enforcement of the judgment absent posting a bond, under Code of Civil Procedure section 917.1, subdivision (a)(1), but an appeal from an order denying a collateral challenge to the judgment did so under Code of Civil Procedure section 916.” (*People v. American Contractors Indemnity Co.*, *supra*, 136 Cal.App.4th at p. 250.)

We agree with the Fourth District’s reasoning. The plain language of section 1306, subdivision (f) reads: “[t]he right to enforce a summary judgment . . . *shall expire* two years after the entry of the judgment.” (Italics added.) The statute gives no indication that the time for enforcement of summary judgment on a bail bond forfeiture will be stayed under any circumstances. (*County of Orange v. Classified Ins. Corp.*, *supra*, 218 Cal.App.3d at p. 558.) Moreover, reading in a tolling exception to permit a stay of the enforcement deadline during pendency of an appeal would not be consistent with the Legislature’s goal of expediting enforcement of such judgments. (See *People v. American Contractors Indemnity Co.*, *supra*, 136 Cal.App.4th at p. 250 [identifying this legislative purpose].)

Respondent ignores these controlling authorities and urges us to affirm the orders based on a variety of theories, none of which has merit.

First, respondent claims it did attempt to enforce the judgments because it demanded payment within 30 days after they were entered. Of course, section 1306, subdivision (e) *required* respondent to demand payment within this time frame, but

demanding payment is not the same thing as instituting procedures to enforce a judgment. This distinction is implicit in the statute itself. Subdivision (e)(1) of section 1306 directs the county to demand payment within 30 days after a summary judgment becomes final and then, only after the judgment has remained unpaid following the demand, subdivision (e)(2) directs the county to proceed to enforcement measures. Although “enforcement” can embrace situations beyond actual payment of the judgment (see *County of Los Angeles v. Surety Ins. Co.* (1989) 207 Cal.App.3d 1126, 1129-1131 [construing surety’s posting of \$15,000 appeal bond as enforcement]), there is no evidence respondent instituted any procedures in these cases to obtain satisfaction of the summary judgments. Section 1306, subdivision (f) would be rendered meaningless if a mere demand for payment were held sufficient to constitute enforcement.

Second, respondent argues that SNC is equitably estopped from relying on the two-year deadline of section 1306, subdivision (f), because SNC asked the trial court to stay the disqualification provisions of section 1308. Section 1308 permits the court to refuse to accept a surety on bail if the surety has failed to pay a summary judgment entered against it; however, this disqualification provision is tolled during the pendency of any proceedings brought to test the validity of the forfeiture order or summary judgment. (§ 1308, subd. (a).) Respondent argues SNC is estopped from raising the time bar of section 1306, subdivision (f) because on August 29, 2001, when SNC asked the trial court to stay disqualification while it challenged the summary judgments, it stated, “The People will not be prejudiced by these orders, based on the fact that the People have two years to enforce the judgments and on estoppel grounds since the Civil Defendant is requesting the stays.”

“ ‘A valid claim of equitable estoppel consists of the following elements: (a) a representation or concealment of material facts (b) made with knowledge, actual or virtual, of the facts (c) to a party ignorant, actually and permissibly, of the truth (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it. [Citations.]’ (13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 191, pp. 527-528.)” (*People v. American Contractors Indemnity Co.*, *supra*,

136 Cal.App.4th at p. 251.) There is no indication SNC misrepresented any facts, or that respondent was ignorant of any relevant fact. “The dates on which the summary judgment and orders were entered are not in dispute, and the parties were well aware of the two potentially applicable statutes and the case law.” (*Ibid.*) In the very statement respondent relies upon for its estoppel argument, SNC observed that the county had “two years to enforce the judgments”—a correct summary of section 1306. Nor is there any valid basis for holding SNC judicially estopped from raising section 1306, subdivision (f) because there is no evidence SNC took inconsistent positions with respect to application of this statute. (See *People v. American Contractors Indemnity Co.*, *supra*, 136 Cal.App.4th at p. 251 [judicial estoppel applies only if a party “took two totally inconsistent positions”].) A surety’s request to stay disqualification does not affect the county’s ability to initiate enforcement proceedings, and such a request is thus not inconsistent with the unabated running of time under section 1306, subdivision (f). (See *County of Orange v. Classified Ins. Corp.*, *supra*, 218 Cal.App.3d at pp. 557-558 [concluding a stay of disqualification sanctions against a surety did not result in a stay of the county’s statutory deadline for enforcement].) Moreover, estoppel may not be inferred simply because a surety waits until the two-year deadline has expired to raise a section 1306, subdivision (f) argument. (*People v. American Contractors Indemnity Co.*, *supra*, 136 Cal.App.4th at p. 251.)

Third, relying on *People v. Cox* (1988) 202 Cal.App.3d 574, respondent suggests the summary judgments should remain enforceable despite the jurisdictional bar of section 1306, subdivision (f) because they are adjudications that SNC breached its bail bond contracts with respondent. The factual situation in *Cox* was quite different, however. In *Cox*, the surety promptly paid certain summary judgments against it, but six years later it sought reimbursement of this payment because it discovered the judgments were void (due to the trial court’s failure to enter them within 90 days). (*People v. Cox*, *supra*, 202 Cal.App.3d at p. 576.) The appellate court agreed the summary judgments were void and ineffectual for any purpose, but it concluded reimbursement was not required because it construed the surety’s payment as voluntary satisfaction of its

contractual obligation on the bond. (*Id.* at pp. 579-580.) This holding in no way supports making an exception to the statutory deadline for enforcement of judgments. The *Cox* court itself distinguished the contractual basis of the bonding procedure “from the purely statutory procedure for enforcing collection on the bond.” (*Id.* at p. 580.)

Finally, respondent maintains section 1308 gives the trial court—and, apparently, this appellate court—the power to disqualify SNC from writing bail in California until the summary judgments are paid. Because respondent took no action to enforce the judgments for more than two years, its right to enforce them has permanently expired. (§ 1306, subd. (f); *County of Orange v. Classified Ins. Corp.*, *supra*, 218 Cal.App.3d at p. 559.) This is the only question before us in these appeals. We need not decide the hypothetical question whether a surety can be subjected to disqualification under section 1308 for failure to pay an unenforceable judgment.

DISPOSITION

The postjudgment orders are reversed. In each of these seven cases, the trial court is directed to enter an order permanently staying enforcement of the summary judgments previously entered against SNC.

McGuiness, P.J.

We concur:

Parrilli, J.

Pollak, J.